

# **REVISED AND SUBSTITUTED RULES TITLE 288 OF THE NEBRASKA STATE BOARD OF PUBLIC ACCOUNTANCY**

Effective May 8, 1995

## **TITLE 288: CHAPTER 4 - BOARD MEETINGS AND PROCEEDINGS**

### **001 Organization of the Board**

001.01 The Board shall hold an organizational meeting each year. At such meeting, the Board shall elect from its own members a chair, a vice-chair and a secretary.

002.02 At the organizational meeting, the Board may establish the dates on which the regular meetings of the Board will be held.

### **002 Duties of the Board**

002.01 The Board shall exercise administrative control over the practice of public accountancy in the State of Nebraska, subject to the applicable provisions of the Act.

002.02 The Board shall provide for the preparation and adoption of the annual budget to provide the funds necessary to finance the operation of the Board.

002.03 At least annually, the Board shall establish the fees applicable to candidates for the examinations conducted by the Board and for permits issued by the Board.

002.04 The Board shall employ an executive director, additional personnel, and any other assistance as it may require for the performance of its duties. Unless otherwise directed by the board, the executive director shall keep a record of all proceedings, transactions, and official acts of the board, be custodian of all the records of the board, and perform such other duties as the board may require.

### **003 Duties of Officers**

The chair of the Board, or in the event of the chair's absence or inability to act, the vice-chair, shall preside at Board meetings and shall perform all duties imposed by the Act and such other duties as may be prescribed by action of the Board. The chair shall appoint such committees or hearing panels as are provided by the Act and these Regulations or established by the Board. The Board shall determine other duties of the officers.

### **004 Meetings**

004.01 Emergency Meetings.

Emergency meetings of the Board may be held in accordance with the provisions of Section 84-1411(3), as follows:

004.01A The Secretary or other designee of the Board shall maintain a list of the news media requesting notification of meetings and shall make reasonable efforts to provide advance notification to them of the time and place of each meeting, and the subjects to be discussed at the meeting.

004.01B When it is necessary to hold an emergency meeting of the Board without reasonable advance public notice, the nature of the emergency shall be stated in the minutes and any formal action taken in such meeting shall pertain only to the emergency.

004.01C Such emergency meetings may be held by means of electronic or telecommunication equipment.

#### 004.02 Closed Meetings.

Closed meetings of the Board may be held in accordance with investigations conducted under Section 1-137 of the Act or under the provisions of Section 84-1410, R.R.S., as follows:

004.02A A closed meeting may be called by an affirmative vote of at least five (5) members of the Board; provided, that such session is clearly necessary for the protection of the public interest or for the prevention of needless injury to the reputation of an individual and if such individual has not requested a public meeting.

004.02B The vote to hold a closed session shall be taken in open session.

004.02C The vote of each member on the question of holding a closed session, the reason for the closed session, and the time when the closed session commenced and concluded shall be recorded in the minutes of the Board meeting.

004.02D The meeting shall be reconvened in open session before any formal action may be taken by the Board.

004.02E Any member of the Board shall have the right to challenge the continuation of a closed session if the member believes that the session has exceeded the reason stated in the original motion to hold a closed session. Such challenge shall be overruled only by a majority of the members present. Such challenge and its disposition shall be recorded in the Board minutes.

#### 004.03 Open Meetings.

Except as provided under 004.01 and 004.02 as given above, meetings of the Board of Public Accountancy shall be held in open session.

004.03A Notice. Not less than seven (7) days prior to any regular or special meeting of the Board notice shall be given to each Board member of the time and place of the meetings and of the agenda of subjects to be discussed or acted upon, as known at the time such notice is given. Such notice shall be deemed served when mailed to the address of each Board member as shown on the records of the Board. Publicized notice of all regular or special meetings of the Board shall be

given by the publication of notice of the time and place of the meeting accompanied by a declaration that the agenda of all meetings is kept continuously current and available for public inspection at the offices of the Board in Lincoln, Nebraska. All notices shall be published in a paper with general circulation within this State at least five (5) days prior to the meeting. In addition, the Board shall provide notice to all other news media requesting such notification.

004.03B        Agenda. The Secretary or his or her designee shall maintain an agenda of all business to be considered or conducted by the Board. Any member may place an item on the agenda for consideration at the next meeting of the Board by notifying the Secretary or his or her designee not less than three (3) days prior to the giving of notice for such meeting. Items not placed on the agenda and included in the notice of meeting can only be considered if of an emergency nature.

004.03C        Form of Meeting. The parliamentary procedures of meetings of the Board shall be determined by Roberts' Rules of Order Revised, unless these Regulations or the Act or other statutes of the State of Nebraska require other procedures. Five (5) members shall constitute a quorum for the transaction of business at any meeting of the Board.

004.03D        Opportunity for Public Expression. The Board, as a representative governmental body, recognizes the importance of the public's viewpoint relative to its actions. Members of the public and holders of a CPA certificate, a permit to practice, or an inactive registration who desire to express ideas, grievances, or other matters to the Board should notify the Secretary at the commencement of the meeting, if possible, so that the Chairman can recognize such person as the appropriate agenda item is reached. The Chairman is authorized to rule any speaker out of order if the remarks being made are irrelevant and not germane to any subject matter currently before the Board, or if the speaker's remarks relate to a subject matter over which the Board lacks jurisdiction.

004.03E        Voting. All votes on motions and resolutions shall be by roll call vote by the Board in open session. The record shall show how each member voted, or whether the member was absent or not voting. The votes to elect the officers of the Board may be taken by secret ballot; but the total number of votes for each candidate shall be recorded in the minutes.

004.03        Minutes. The Secretary or his or her designee shall keep minutes of all the Board's meetings showing the time, place, members present and absent, and the substances of all matters discussed. The minutes of all meetings and evidence and documentation received or disclosed in open session shall be public records and open to the public inspection during normal business hours. Duplicated copies of the minutes shall be prepared following each meeting by the Secretary of the Board. Such minutes shall be written and available for public inspection within ten (10) working days, or prior to the next convened meeting, whichever occurs earlier.

### **005 Formal Hearings.**

For purposes of this Rule, "formal hearings" shall mean a hearing called for the purpose of hearing evidence with regard to a holder of a CPA certificate or a permit to practice or an inactive registration issued by this State. Such hearings shall be based on the charges specified in Section 1-137 of the Public

Accountancy Act.

005.01 Formal hearings shall be held during open meetings of the Board. Such hearings shall be based on a complaint issued by the Board. Such complaint shall be issued where probable cause has been determined pursuant to Section 1-137 of the Act, or where the Board has received a written complaint by any person or firm furnishing grounds for probable cause, or where the Board has received notice of violation from another Board of Accountancy.

005.02 The complaint shall set forth the appropriate charges, as listed in 1-137, and shall set forth the time and place for such hearing.

005.03 Not less than thirty (30) days prior to the date of the formal hearing the Board shall serve a copy of the complaint and notice of the time and place of the hearing upon the CPA certificate or permit holder or inactive registrant, together with a copy of the Board's rules governing proceedings under this Section, either by Registered or Certified Mail to the certificate holder at his address last known to the Board.

005.04 Formal hearing shall be chaired by the Board's Chairman, or his designee.

005.05 At such hearing, opportunity shall be offered to all interested parties to present evidence and arguments on the charges specified in the complaint issued by the Board. The Chairman may rule incompetent, irrelevant, immaterial, and unduly repetitious evidence to be out of order.

005.06 Any interested party may request that the Board be bound by the rules of evidence applicable in the Lancaster County District Court by delivering to the Board's offices at least three (3) days prior to the scheduled date of the hearing a written request to the effect. Such request shall include the requesting party's agreement to be liable for the payment of costs incurred thereby and upon any appeal or review thereof. Otherwise, the Board shall not be so bound.

005.07 The Board may administer oaths; issue subpoenas, compel the attendance of witnesses and the production of any papers, books, accounts, documents, and testimony; and cause the depositions of witnesses residing either within or without this State. Such actions may be undertaken either at the request of the parties to the complaint or upon the Board's own motion.

005.08 All costs of the formal hearing shall be paid by the party or parties against whom the final decision is rendered.

005.09 Every party to the complaint shall have right of cross-examination of witnesses who testify and shall have the right to submit rebuttal evidence to such testimony.

005.10 Documentary evidence may be received in the form of copies of excerpts or by incorporation by reference. All evidence including records and documents in the possession of the Board of which it desires to avail itself be offered and made a part of the record in the case.

005.11 The evidence supporting the complaint shall be presented by the investigating officer, if any, by a Board member designated for that purpose, by counsel, or by the party or parties filing the original written complaint. The Board member who presents the evidence or

who investigates the complaint under Section 1-137 shall not participate in the vote on the complaint.

005.12 If, after service of a complaint and notice of hearing as provided in 005.03 above, the CPA certificate or permit holder or inactive registrant fails to appear at the hearing, the Board may proceed to hear evidence against the CPA certificate or permit holder or inactive registrant and may render such decision as it deems warranted by the evidence.

Such order shall be final unless by the Board's motion the hearing be rescheduled. Such rescheduling shall be allowed only if the CPA certificate or the permit holder or the inactive registrant demonstrates within thirty (30) days of the originally scheduled hearing that his failure to attend was for good cause.

005.13 In formal hearings, the Board may take notice of general, technical, or scientific fact and, in addition, may take notice of general, technical, or scientific facts within its specialized knowledge. Likewise, the Board may utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to it. Parties to the complaint shall be notified during the hearing of the facts so noted. The parties will be afforded the opportunity to contest the facts so noted by the Board.

005.14 Every decision and order adverse to a party to the complaint, as rendered by the Board, shall be in writing; shall be stated in the minutes of the open meeting; and shall be accompanied by the findings of fact and the conclusions of law. The findings of fact shall consist of a concise statement of the conclusions upon each contested issue of fact.

005.15 Parties to the complaint shall be notified of the Board's decision and order either in person or by Certified Mail. A copy of the decision and order and the accompanying findings shall be delivered or mailed upon request to each party or his attorney of record.

005.16 Any party aggrieved by a final decision before the Board, whether such decision is affirmative or negative in form, is entitled to judicial review under Section 84-917 to 84-919 or under Section 1-149. Nothing in this subsection shall be deemed to prevent resort to other means of review, redress, or relief provided by law.

### **006 Informal Hearings.**

For the purpose of these Rules, "informal hearing" means investigations of complaints filed with this Board. Such investigations shall be for the purpose of determining whether there is probable cause to institute proceedings under 005, "Formal Hearings," for violation of Section 1-137 of the Public Accountancy Act, or Chapter 5 of the Board's Rules and Regulations. An informal hearing is not, however, a necessary prerequisite to a formal hearing on any matter that comes before the Board.

006.01 Informal hearings may be held upon receipt by the Board of a written complaint.

006.02 The Board may designate one of its members, or any other person of appropriate competence, to serve as its investigating officer to obtain information relative to the complaint.

006.03 Upon completion of his investigation, the investigating officer shall file and report as to his findings with the Board. The investigating officer will recommend that the Board either find probable cause and schedule a formal hearing or else lack of probable cause and dismiss the complaint. The Board's determination shall be on the basis of the

investigating officer's report. The report may be returned for further investigation.

006.04      Until there has been a determination of probable cause, the report of the investigating officer, the testimony, and the documents gathered during the investigation shall be treated as confidential information and shall not be disclosed except to the subject of the investigation, persons whose complaints are being investigated, and witnesses questioned during the course of the investigation.

006.05      Upon the findings of probable cause, if the subject of the investigation is the holder of a CPA certificate or a permit to practice, or an inactive registration, the Board shall issue a complaint and hold a public hearing on the complaint in accordance with Chapter 4, Section 5. If the subject of the investigation is not a holder of a CPA certificate or a permit to practice or an inactive registration, the Board may take appropriate action pursuant to either Section 165 or Section 166 of the Act; or the Board may, under its own motion, issue a cease and desist order to such offender.

006.06      After a finding of probable cause and prior to the beginning of a formal hearing, disposition may be made of any complaint by stipulation, agreed settlement, consent order, or default. Such disposition shall be binding on all parties to the complaint.

006.07      The Board may review the professional work of permit holders which is public information on a general and random basis, without any requirement of a formal complaint or suspicion of impropriety on the part of any particular permit holder.

#### 006.07A      Quality Enhancement Program

006.07A1 There is hereby established a Quality Enhancement Program (the "Program"). The purpose of the Program is to improve the quality of financial reporting and to assure that the public can rely on the fairness of presentation of financial information on which licensees issue reports. The program emphasizes education and rehabilitation rather than disciplinary action. Appropriate educational programs or procedures will ordinarily be recommended or required where reporting does not comply with appropriate professional standards. However, when a licensee is unwilling or unable to comply with such standards, or a licensee's professional work is so egregious as to warrant disciplinary action, such action may be reported as the appropriate means of protecting the public interest.

006.07A2      The Board will annually appoint a Quality Review Committee (hereinafter the "Committee") to assist in the implementation and administration of the Program. The Committee will consist of no fewer than seven members which will include a member of the State Board who will serve as liaison between the State Board and the Committee and one accounting educator selected by the State Board from the faculty of an accredited Nebraska College or University and who possesses a valid Nebraska CPA certificate. The remaining members of the Committee shall be filled by appointment of the

State Board and must be holders of certificates and currently valid Nebraska permits to practice public accountancy issued under Section 1-136.02 of the Act and shall, to the extent practical, represent a cross-section of the different sized firms in the state. The Committee's responsibilities will include:

006.07A2a Developing procedures for the internal operation of the Committee;

006.07A2b Developing criteria for assignment of reviewers to specific tasks taking into account such factors as geographic location, size of firm, technical skill requirements, and such other criteria as the Board determines appropriate;

006.07A2c Assisting the Board in the selection and training of reviewers;

006.07A2d Developing and recommending to the Board a system for selection of reports to be reviewed and for the review of supporting workpapers following a substandard report review;

006.07A2e Evaluating the findings of the reviewers and making reports and recommendations to the Board;

006.07A2f Compiling and reporting to the Board statistics on the impact and effect of the Program;

006.07A2g Considering such other matters and performing such other duties regarding the Program as may be assigned to it by the Board from time to time.

006.07A3 On and after June 1, 1987, each practice unit seeking renewal of a permit to practice under Section 1- 136.01 of the Act shall furnish in connection with its application, with respect to each office maintained by the applicant and practicing public accountancy in this State, one copy of each of the following kinds of reports issued by the office during the twelve month period next preceding the date of application, if any report of such kind was issued during such period:

006.07A3a A compilation report;

006.07A3b A review report; and

006.07A3c An audit report.

006.07A4 The Board may exempt from the requirements of subsection 006.07A - 006.07A12 any office which within the three years immediately preceding the application has been subjected to a quality review at least consistent with the requirements of this rule; provided, that a copy of the report of such quality review, including, at the Board's request, any letters of comment and responses from the practice unit or firm to such letters of comment, is submitted with the permit renewal application.

006.07A5 Any documents submitted in accordance with subsection 006.07A - 006.07A12 may have the name of the client, the client's address, and other identifying factors omitted, provided that the omission does not render the type or nature of the enterprise undeterminable. For example, the client name, address, or federal identification number may be omitted but reference to the type of organization, such as, financial institutions, school districts, hospital, etc., may not be omitted.

006.07A6 The Committee may also solicit for review financial statements and related reports of licensees from public agencies, banks, and other users of financial statements.

006.07A7 The identities of the sources of financial statements and reports received by the Board or the Committee from other than the licensees who issued the reports shall be preserved in confidence. Reports submitted to the Committee pursuant to subsection 006.07A - 006.07A12 and comments of reviewers, the Committee and the Board on such reports or workpapers relating thereto, shall also be preserved in confidence except to the extent that they are communicated by the Board to the licensees who issued the reports.

006.07A8 The Committee shall annually review approximately one-third of the reports submitted in accordance with subsection 006.07A 3, and in addition such reports as it receives pursuant to subsection 006.07A6 and such reports as may be referred to it by the Board.

006.07A9 The Committee shall determine, with respect to each report that it reviews,

006.07A9a Whether the report is or is not in general conformity with applicable professional standards;

006.07A9b If not, in what respects the report is deemed substandard or seriously questionable; and

006.07A9c Any recommendations it may have concerning possible improvement of the quality of



the report;

006.07A9d and it shall report its determinations and recommendations to the Board of Public Accountancy.

006.07A10 If the Committee reports to the Board that a report is substandard or seriously questionable pursuant to subsection 006.07A9b, the Board may direct that a review of the workpapers be conducted by a reviewer. The review of the workpapers under this section shall be conducted by a person other than the person who performed the original review of the report. The findings of any such review of the workpapers shall be transmitted directly to the Board. The cost of any workpaper review shall be borne by such licensee.

006.07A11 The Board shall review the determinations and recommendations regarding reviews of reports by the Committee pursuant to 005.07A9; and in any case where the Committee has determined, and the Board concurs, that a report is in general conformity with applicable professional standards, the Board shall forward the Committee's determination and recommendations, if any, to the person in charge of the office which submitted the report.

006.07A12 If the Board determines that a report referred to the Board by the Committee is substandard or seriously questionable with respect to applicable professional standards, the Board may take any one or more of the following actions:

006.07A12a The Board may submit to the licensee firm a letter of comment detailing the perceived deficiencies noted in connection with the review and requiring the licensee to develop a set of planned control procedures to insure that similar occurrences will not be present in the future. A written response from the licensee firm will be required within 30 days of the mailing of the Board's letter and will be subject to follow-up review by the Board.

006.07A12b The Board may require any individual licensee who had responsibility for issuance of the report or who substantially participated in preparation of the report and/or the related workpapers to complete successfully specific courses or types of continuing education as specified by the Board. The cost of any course or courses shall be borne by such licensee.

006.07A12c The Board may require that the office responsible for the substandard report submit

all or specified categories of its reports to a preissuance review in a manner and for a duration prescribed by the Board.

006.07A12d The Board may require the office or the licensee firm responsible for the substandard report to submit to a quality review pursuant to this Rule.

006.07A12e If it appears that the professional conduct reflected in the substandard report is so serious as to warrant consideration of possible disciplinary action, the Board may initiate an investigation pursuant to the laws of the State of Nebraska.

## **007 Adoption of Rules**

007.01 Any interested person may petition the Board requesting the promulgation, amendment, or repeal of any rule. Such petition shall be submitted in written form and shall give the specific language of the petitioner's proposal.

007.02 No rule shall be adopted, amended, or repealed by the Board except at a public hearing held during a regularly scheduled meeting of the Board.

007.03 Notice of such public hearing shall be given at least thirty days prior to the hearing and in accordance with the notice for the open meeting of the Board at which the adoption, amendment, or repeal of such rule is to be considered.

007.04 Draft copies or working copies of all rules to be considered for adoption, amendment, or repeal by the Board shall be available to the public at the offices of the Board and at the offices of the Revisor of Regulations at the time notice is given and until two (2) weeks following the public hearing.

007.05 All hearings for the adoption, amendment, or repeal of a rule shall be open to the public.

## **008 Conflicts of Interest; Board members; participation; disclosure.**

008.01 Pursuant to Nebraska Revised Statutes, Section 1-108.01, the Board shall follow the definitions and procedures set forth in the Nebraska Political Accountability and Disclosure Act and any rules and regulations promulgated pursuant to such Act and as amended from time to time with respect to conflicts of interest of Board members. Statutory Authority: Section 1-108, Section 1-112, Sections 84-904 to 84-917, and Sections 84-1408 to 84-1414, R.R.S. 1943